

News from the FPPC

California Fair Political Practices Commission
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For Immediate Release: July 15, 2010

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FPPC Solicits Comments Defining Campaign Speech *Staff to discuss possible impacts of recent U.S. Supreme Court ruling*

Staff of the Fair Political Practices Commission (FPPC), the state's political watchdog agency, is hosting an Interested Persons' Meeting seeking input from individuals regulated by the Commission, political reform groups and concerned Californians regarding the FPPC's current interpretation of "express advocacy" on **Monday, July 19, 2010, at 10 a.m., in the 8th Floor Hearing Room at 428 J St. in Sacramento, CA.**

"I've asked staff to convene this meeting so the Commission can benefit from a wide range of viewpoints prior to making any decisions on this important subject," said FPPC Chairman Dan Schnur. "Our goal is to collect as much information as possible, so the Commission can provide guidance to campaigns going into the fall election season."

In political law there are two types of speech: issue advocacy and express advocacy. Issue advocacy informs the public about matters unrelated to an election and the reporting required in California for this type of communication is to file an online form identifying who paid for an advertisement costing \$50,000 or more featuring a candidate for state office that was distributed within 45 days of an election. Information about who is required to file form [E-530](#) is now available on the FPPC's website.

Express advocacy urges a particular outcome in an election and groups engaging in this regulated speech must comply with state rules requiring periodic disclosure of where they received their money, how it was spent and identify within their advertisements that they paid for the political communications seen or heard by voters.

In late 2002, the California First District Court of Appeal issued a decision entitled *The Governor Gray Davis Committee v. American Taxpayer Alliance*, which had the effect of limiting the definition of express advocacy in California to a list of words like "support," "oppose," "vote for," etc. These "magic words" were determined to be the sole element that a committee, or the FPPC, need to consider when determining if a group should be regulated and make all of the attendant disclosures.

Recently the U.S. Supreme Court issued its ruling in *Citizens United v. FEC*, which reconsidered the notion that magic words within an advertisement were the only element to look for when defining express advocacy. The Court determined that express advocacy also exists when its "functional equivalent" is present where it "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

Faced with these two judicial decisions, one in state court and one in federal, FPPC staff is soliciting input from the public to formulate a recommendation for the Commission's consideration. At the **August 12, 2010** public meeting of the Commission, staff will present their recommendation as to how the Commission should interpret express advocacy.

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